



November 29, 2017

To: Jill Sewell
Contract Awards Branch Chief
Department of Transportation
Division of Engineering Services
Office Engineer MS 43
1727 30th Street
Sacramento, CA 95816

Re: Bid Protest
04-4G2204 Hwy 12
Bid Date: November 9, 2017

Dear Mrs. Sewell,

On Thursday, November 9, 2017, Ghilotti Construction Company, Inc. (Ghilotti) bid the above referenced project and at the time of the bid opening was the apparent 2nd low bidder with Ghilotti Bros., Inc. (GBI) being the low bidder. This letter serves as a protest of the bid submitted by GBI and Ghilotti hereby requests that the Department deem GBI's bid nonresponsive.

The Dept. of Transportation must reject GBI's bid as nonresponsive because it did not meet the DBE goal and did not perform a Good Faith Effort.

GBI could have met the DBE goal of 15% for this contract, but chose not to do so. GBI's List of Rejected Firms shows that Bridgeway Civil Constructors (a non-DBE firm) was selected while Vertical Constructor's proposal (a DBE firm) was rejected.

- 1) Vertical's bid for the Concrete Barrier 736 Series item of work was \$64,690 less than Bridgeway's bid (Bridgeway \$506,625 versus Vertical \$441,935). See attached GBI List of Rejected Firms.
- 2) Had GBI selected Vertical for this item of work GBI would have gained an additional 10% in DBE participation as a result and would have exceeded the DBE goal of 15% (GBI achieved only 9.93% DBE participation).

— Engineering Contractor —

248 GHILOTTI AVENUE • SANTA ROSA, CA 95407 • 707-585-1221 • FAX: 707-585-0129

www.ghilotti.com

STATE CONTRACTORS LICENSE #044516

Referring to 49 CFR 26 App A section V states, "At a minimum, [the Department] must review the performance of other bidders in meeting the contract goal."

Three years ago, the Department modified specification section 2-1.12B (3) to read DBE Good Faith Efforts Submittal – "The Department considers DBE commitments of other bidders in determining whether the low bidder made good faith efforts to meet the DBE goal." This specification previously read, "The Department may consider DBE commitments of the 2nd and 3rd bidders...". The passive language of "may" was removed and the Department is directed to consider the other bidders.

In the case of this contract, the low bidder did not meet the DBE goal while bidders two and three did meet the goal.

GBI performed DBE outreach and solicitations that clearly identified DBE firms able to perform work on this contract (i.e. Vertical and CMC Const.) and that offered proposals on the various items of work, but were not selected. Parenthetically, the CMC Const. versus GBI Self Perform for traffic control is not an accurate comparison - GBI Self Perform price of \$880.50 is for one man per shift while the CMC price of \$1,660.00 is for two men per shift. See attached GBI List of Rejected Firms.

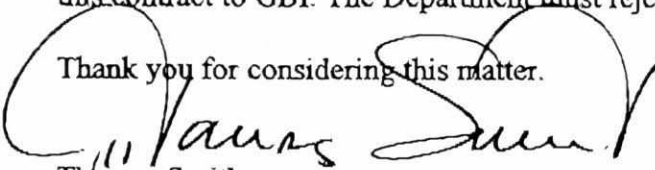
49 CFR 26 App A section D (1) states, "Negotiating in good faith with interested DBE's. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors...". GBI did not negotiate with Vertical or offer to break out the portion of work that Vertical was low bidder on. As a result, GBI did not perform an adequate Good Faith Effort.

GBI could have listed Vertical for the 736 Barrier and listed Bridgeway for the 60 Barrier. These two items of work are independent of each other and Vertical allowed the bidding prime contractor "break out" items of work.

Ghilotti Construction identified, solicited and followed up with the various DBE firms that could perform work on this contract. Ghilotti Construction selected Vertical to perform the Concrete barrier work and listed them on the subcontractor form and the DBE Commitment form. GBI had the same opportunity and chose not to utilize Vertical and thereby did not meet the goal. Ghilotti Construction met the goal.

Based on this information, Ghilotti Construction Company, Inc. hereby protests an award of this contract to GBI. The Department must reject GBI's bid as nonresponsive.

Thank you for considering this matter.



Thomas Smith
Estimating Manager

DBE GOOD FAITH EFFORTS DOCUMENTATION ATTACHMENTS

CT Page 4 Item 3 Attachment

Contract No. 04-4G2204

Work	Offered Plans/Specifications for Work Offered	Selected Subcontractor	DBE or Non-DBE	Rejected DBE	Quote (\$)	Price Difference (\$)
Construction Area Signs	X YES NO	Schack Construction	DBE		\$ 1,995.00	
	X YES NO		Non-DBE	Fairwest Safety	\$ 1,500.00	\$ 495.00
	X YES NO		Non-DBE	Stamwade Safety	\$ 1,440.00	\$ 553.00
	X YES NO		Non-DBE	Highway Specialty	\$ 1,895.00	\$ 100.00
Roadside Signs	X YES NO	Schack Construction	DBE		\$ 13,170.00	
	X YES NO		Non-DBE	Fairwest Safety	\$ 9,766.00	\$ 3,364.00
	X YES NO		Non-DBE	Stamwade Safety	\$ 13,423.00	\$ (293.00)
	X YES NO		Non-DBE	Highway Specialty	\$ 10,963.00	\$ 2,167.00
Traffic Control / CMS Boards	X YES NO	Maneri Traffic Control	DBE		\$ 6,800.00	
	X YES NO		DBE	High Traffic	\$ 7,400.00	\$ (600.00)
	X YES NO		Non-DBE	GBI	\$ 4,000.00	\$ 2,800.00
Traffic Control (Night Shift)	X YES NO	GBI Self Perform	Non-DBE		\$ 880.50	
			DBE	CMC Construction	\$ 1,665.00	\$ (744.50)
Place Asphalt Concrete	X YES NO	ABSL Construction	DBE		\$ 6,400.00	
				No Other DBE Quotes Received		
Clearing & Grubbing	X YES NO	GBI Self Perform	Non-DBE		\$ 143,000.00	
Erosion Control - Permanent Fiber Roll	X YES NO	Nix Erosion Control	DBE		\$ 8,458.00	
	X YES NO		Non-DBE	Team CES	\$ 7,361.60	\$ 1,496.40
	X YES NO		Non-DBE	Stormwater Services	\$ 6,860.00	\$ 1,578.00
	X YES NO					
Erosion Control - Temp Erosion High Visibility Fence	X YES NO	Nix Erosion Control			\$ 6,419.00	
	X YES NO		Non-DBE	Team CES	\$ 4,340.20	\$ 2,069.80
	X YES NO		Non-DBE	Stormwater Services	\$ 3,930.00	\$ 2,487.00
Place AC Dike	X YES NO	AC Dike	Non-DBE		\$ 4,475.00	
				No DBE Quotes Received		
Grove & Grind Pavement (Sewer)	X YES NO	Day Line Cutting & Coring	DBE		\$ 19,700.00	
				No DBE Quotes Received		
Minor Concrete	X YES NO	GBI Self Perform	Non-DBE		\$ 65,000.00	
	X YES NO		DBE	Emmett B. Doss	\$ 88,638.80	\$ (23,638.80)
Metal Guard Rail	X YES NO	GBI Self Perform	Non-DBE		\$ 20,740.00	
				No DBE Quotes Received		
Thermal Striping, Paint & Markers	X YES NO	Chrip Company	Non-DBE		\$ 46,908.00	
	X YES NO	Long Electric Co.	Non-DBE		\$ 208,000.00	
Electrical	X YES NO		Non-DBE	Mike Brown	\$ 300,000.00	\$ (92,000.00)
	X YES NO		DBE	Hutchison Electrical	\$ 317,000.08	\$ (179,000.00)
	X YES NO		DBE	High Light Electric	\$ 440,000.00	\$ (123,000.00)
	X YES NO		Non-DBE	St. Francis Electric	\$ 523,450.00	\$ (315,450.00)
Trucking	X YES NO	Valdivia Trucking	DBE			
	X YES NO			No Other DBE Quotes Received		
Reinforcing Steel	X YES NO	Bridgeway Civil Constructors (& 2nd Tier Sub)	Non-DBE		\$ 149,851.60	
	X YES NO		DBE	Willis Rebar	\$ 245,326.27	\$ (95,472.67)
	X YES NO					
Concrete Barrier 60 Series	X YES NO	Bridgeway Civil Constructors (& 2nd Tier Sub)	Non-DBE		\$ 246,700.00	
	X YES NO		DBE	Vertical Construction	\$ 460,780.00	\$ (164,080.00)
Concrete Barrier 736 Series	X YES NO	Bridgeway Civil Constructors (& 2nd Tier Sub)	Non-DBE		\$ 506,623.00	
	X YES NO		DBE	Vertical Construction	\$ 443,935.00	\$ 64,690.00
CIDH Piling	X YES NO	Bridgeway Civil Constructors (& 2nd Tier Subcontractor)	Non-DBE		Total Bid for Bid Item #40 \$92,520.00	
			Non-DBE		\$ 36,529.00	
****This item is a drill, set cage, and pour RCC****	X YES NO		Non-DBE	Jiffy Foundations	\$ 107,322.00	\$ (71,293.00)
	X YES NO		DBE	Millside Drilling	\$ 72,316.00	\$ (36,287.00)